

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 31<sup>st</sup> day of July, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,  
HON. SONIA SOTOMAYOR,  
HON. RICHARD C. WESLEY,  
*Circuit Judges.*

Gent Gjergji,

*Petitioner,*

-v.-

No. 05-3888-ag

Alberto R. Gonzales, Attorney General

*Respondent.*

FOR PETITIONER: Charles Christophe, Christophe & Associates, P.C., New York,  
New York.

FOR RESPONDENT: Gretchen C. F. Shappert, United States Attorney for the Western  
District of North Carolina, Amy E. Ray, Assistant United States  
Attorney, Asheville, North Carolina.

UPON DUE CONSIDERATION of this consolidated petition for review from the Board of Immigration Appeals (“BIA”), it is HEREBY ORDERED, ADJUDGED, AND DECREED that the petition for review is DENIED.

1           Gent Gjergji, a native and citizen of Albania, petitions for review the BIA's affirmance of  
2           Immigration Judge ("IJ") Theresa Holmes-Simmons's denial of his claims of asylum and the  
3           withholding of removal and relief under the Convention Against Torture ("CAT"). We assume  
4           the parties' familiarity with the underlying facts and procedural history of the case.

5           When the BIA adopts the decision of the IJ and supplements the IJ's decision, this Court  
6           reviews the decision of the IJ as supplemented by the BIA. *See Yu Yin Yang v. Gonzales*, 431  
7           F.3d 84, 85 (2d Cir. 2005); *Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). This Court  
8           reviews the agency's factual findings, including adverse credibility determinations, under the  
9           substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B); *see, e.g., Zhou Yun Zhang v. INS*, 386  
10          F.3d 66, 73 & n.7 (2d Cir. 2004). However, we will vacate and remand for new findings if the  
11          agency's reasoning or its fact-finding process was sufficiently flawed. *Cao He Lin v. U.S. Dep't*  
12          *of Justice*, 428 F.3d 395, 406 (2d Cir. 2005); *Tian-Yong Chen v. INS*, 359 F.3d 121, 129 (2d Cir.

13          2004); *see also Xiao Ji Chen v. U.S. Dep't of Justice*, 434 F.3d 144, 158 (2d Cir. 2006) (agreeing  
14          with this principle, but avoiding remand, in spite of deficiencies in an adverse credibility  
15          determination, because it could be confidently predicted that the agency would adhere to the  
16          decision were the case remanded).

17          In this case, the IJ found Gjergji's testimony about his Democratic Party membership  
18          incredible and implausible because, given his claimed position of Chairman of the Youth Forum,  
19          among other things: (1) Gjergji could not testify clearly about the party's leadership; (2) Gjergji  
20          was unable to give specific details about a well-known protest in Lushnja, where elections fraud  
21          reportedly occurred in 2001; and (3) Gjergji's testimony about the beating he received at the  
22          hands of the police was implausible, as he never clearly explained how the police were able to

1 identify him as a Democratic Party member. These are “specific, cogent reasons” that “bear a  
2 legitimate nexus” to the finding. *Zhou Yun Zhang*, 386 F.3d at 74.

3 Gjergji’s sparse and implausible testimony might have been rehabilitated with  
4 corroborating evidence; however, Gjergji failed to submit such evidence. The IJ’s finding, that  
5 Gjergji’s testimony did not support his claim of being a high ranking member of the Youth  
6 Forum, is supported by substantial evidence.

7 A petitioner must raise issues to the agency in order to preserve them for judicial review.  
8 *See Ivanishvili v. U.S. Dep’t of Justice*, 433 F.3d 332, 343 (2d Cir. 2006); 8 U.S.C. §1252(d)(1).  
9 In his appeal to the BIA, Gjergji failed to meaningfully challenge the IJ’s denial of his  
10 withholding of removal and CAT claims; therefore, this Court lacks the jurisdiction to review  
11 those claims.

12 For the foregoing reasons, the petition for review is DENIED. The pending motion for a  
13 stay of removal in this petition is DENIED as moot. The pending request for oral argument in  
14 this petition is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and  
15 Second Circuit Local Rule 34(d)(1).

16 FOR THE COURT:  
17 Roseann B. MacKechnie, Clerk  
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19 By: \_\_\_\_\_  
20 Oliva M. George, Deputy Clerk  
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